

Minutes of the County Commissioners of Worcester County, Maryland

February 19, 2008

James L. Purnell, Jr., President
Louise L. Gulyas, Vice President
Judith O. Boggs
Linda C. Busick
James C. Church
Robert L. Cowger, Jr.
Virgil L. Shockley

Following a motion by Commissioner Boggs, seconded by Commissioner Gulyas, with Commissioner Shockley absent, the Commissioners unanimously voted to meet in closed session at 9:00 a.m. in the Commissioners' Conference Room to discuss legal and personnel matters permitted under the provisions of Section 10-508(a)(1), (3), (7) and (8) of the State Government Article of the Annotated Code of Maryland and to perform executive actions. Also present at the closed session were Gerald T. Mason, Chief Administrative Officer; Kelly Shannahan, Assistant Chief Administrative Officer; Sonny Bloxom, County Attorney; Kim Moses, Public Information Officer; Deedee Rouse, Director of Human Resources; Ed Tudor, Director of Development Review and Permitting; and John Tustin, Director of Public Works. Topics discussed and actions taken included: hiring Jennifer Standish as Recreation Program Supervisor and Kelly Buchanan and Christopher Adkins as Recreation Program Managers for Recreation and Parks; appointing John C. Dorman to the Solid Waste Advisory Committee; considering acquisition of real property for public purposes; reviewing pending and potential litigation; receiving legal advice from Counsel; and performing executive actions.

Commissioner Shockley was absent during the Commissioners closed session, but arrived at the meeting prior to the open session.

After the closed session, the Commissioners reconvened in open session. Commissioner Purnell called the meeting to order and announced the topics discussed during the morning closed session.

The Commissioners reviewed and approved the minutes of their February 5, 2008 meeting, as presented.

Pursuant to the request of Sharon Beyma, Director of Administrative Services for the Health Department, and upon a motion by Commissioner Gulyas, the Commissioners unanimously authorized Commission President Purnell to sign a lease agreement for an apartment at 405 Lark Lane in Ocean City that is to be used to house the Hot Boards Assessment Unit for the Ocean City Youth Health Center during the summer of 2008.

Pursuant to the recommendation of Ms. Beyma and upon a motion by Commissioner

Gulyas, the Commissioners unanimously awarded the sole bid for the production and distribution of 75,000 36-page booklets and 500 posters to be distributed for the 2008 Play It Safe in Ocean City Senior Guide campaign to Oddi Atlantic of Princess Anne, Maryland at costs of \$13,995 for the booklets and \$350 for the posters. Commissioner Busick noted that only \$11,000 had been budgeted for this project. In response to a question from Commissioner Busick, Chief Administrative Officer Gerald T. Mason advised that the additional funds of \$2,995 would come out of the Health Department's budget.

The Commissioners reviewed a letter from Melanie A. Pursel, Executive Director of the Greater Ocean City, Maryland Chamber of Commerce asking them to partner with the Chamber by providing funding in the amount of \$53,733.80 to purchase a large sign with a full color reader board to publicize county events. In her letter, Ms. Pursel advised that the Chamber would locate additional funding for landscaping and maintenance of the sign. Following some discussion and upon the recommendation of Mr. Mason and a motion by Commissioner Gulyas, the Commissioners unanimously agreed to consider the request during FY09 Budget deliberations.

The Commissioners met with Edward A. Tudor, Director of Development Review and Permitting, to discuss the Town of Pocomoke City's proposed Annexation Resolution A-08-01. Mr. Tudor informed the Commissioners that by virtue of the above-referenced Annexation Resolution, the Town of Pocomoke is proposing to annex approximately 4.09 acres located on the southerly side of Unionville Road to the southwest of Williams Street. The area proposed for annexation is comprised of two parcels. Parcel 1 is essentially the road bed of Clarke Avenue and Unionville Road while Parcel 2 is property shown on Tax Map 83 as Parcel 103. He stated that while the "Annexation Plan" indicates that the area proposed for annexation is approximately eight acres in size, the property description contained in the public hearing notice and the information shown on the annexation plat indicated that the two parcels total approximately 4.09 acres. He concluded that research completed by the Assessment Department's records leads him to believe the latter acreage to be correct. Mr. Tudor stated that the majority of the property proposed for annexation is currently zoned R-2 Suburban Residential District while the portion along Henderson Gut is zoned C-1 Conservation District. Mr. Tudor noted that Article 23A, Section 9 of the Annotated Code of Maryland provides that no municipal corporation may annex land into its jurisdiction and place upon it a zoning designation which would allow uses substantially different from that of the County's zoning classification for a period of five years without the County Commissioners' consent. Mr. Tudor stated that after examining the applicable sections of the Town of Pocomoke's Zoning Ordinance, it is his opinion that the proposed R-2 zoning classification for the site to be annexed is consistent with existing zoning in the area and in fact is not a change in zoning. He further stated that the proposed annexation is consistent with the State's Smart Growth initiatives as well as the land use recommended by the Comprehensive Plan and existing zoning and land use in the area. He recommended the Commissioners concur with the proposed rezoning upon annexation. Following some discussion and upon a motion by Commissioner Shockley, the Commissioners unanimously concurred with the rezoning upon annexation.

Pursuant to the request of Public Works Director John Tustin and upon a motion by Commissioner Shockley, the Commissioners unanimously declared the proposed list of County vehicles and equipment to be surplus property and agreed to advertise the proposed disposal by auction on GovDeals.com. The Commissioners directed Mr. Tustin to check with the Sheriff's Office to determine why a 1997 Crown Victoria with 91,000 miles had been included on the list declared to be surplus property.

Pursuant to the recommendation of Mr. Tustin in response to the written request of Dave Wilson, Acting Director of the Maryland Coastal Bays Program (MCBP), and upon a motion by Commissioner Gulyas, the Commissioners unanimously approved MCBP's request to hold the Ninth Annual Osprey Sprint Triathlon at Public Landing on Saturday, October 4, 2008 and authorizing assistance from several County agencies, including Public Works, Tourism and Recreation and Parks. The event will include swimming, bicycling and running, and it will begin and end at the boat ramp at Public Landing. Mr. Tustin advised that improvements currently being made at Public Landing should be complete by mid June 2008 well in advance of this event.

The Commissioners met with Mr. Tudor for a hearing on Nuisance Abatement Order No. 07-01, pursuant to Section 1-102 of the Public Health Article of the Code of Public Local Laws of Worcester County, Maryland. Mr. Tudor provided background information on the condition of the property owned by Yanncy Baker and located at 1322 Cypress Road in Pocomoke City. He further advised that Mr. Baker was formally served with Nuisance Abatement Order No. 07-1 by certified letter dated November 21, 2007, which had to be hand-delivered by the Sheriff's Office on January 2, 2008, ordering him to abate the nuisance, which included relocating a 29-foot travel trailer housed on the property, by January 5, 2008. Mr. Tudor stated that, since June 2002 when the County received the first nuisance complaint regarding the use of a recreational vehicle as living quarters through today, DRP has conducted numerous inspections of the property from the public road. He advised that multiple letters have been sent from DRP, in excess of 30, which have been forwarded to the property owner regarding the numerous complaints. He stated that the property owner has made futile attempts to bring the property into compliance, only to have the same nuisance conditions resume weeks later. He went on to say that Mr. Baker had requested this hearing in accordance with the provisions of the County law.

Mr. Baker stated that there were numerous properties within half a mile of his property with ten times the amount of personal property strewn about and asked why his property had been singled out as a nuisance. He advised that he purchased the property in 2002 and has made substantial improvements to the parcel through the construction of a single family dwelling. He advised that construction of the home has been completed on a pay-as-you-go basis, and he recently made the final payment on the property leaving him with no financial resources at the moment. He informed the Commissioners that he has bad credit and is therefore not able to secure a loan, so he has been living in a 29-foot travel trailer on the property since construction began. Mr. Baker stated that he was unaware prior to April 15, 2007 that his permit for the trailer could not be renewed and that he must remove it from the property. Mr. Baker stated that he could not afford to pay rent elsewhere and continue construction on his home, and he asked the Commissioners to allow him to continue living in the trailer until January 1, 2009 so that he

could complete construction of the house. He further advised that the property had recently been cleared of all construction debris and requested County staff visit the property and point out any existing trash.

In response to a question by Commissioner Shockley, Mr. Tudor stated that County law previously allowed property owners to reside in temporary living quarters on their property throughout the construction of permanent housing. However, the Commissioners amended the law, limiting permits for temporary structures to three years and eliminating the possibility of renewal. Commissioner Cowger stated that in response to regular calls of complaint from at least 10 of Mr. Baker's neighbors he has driven by the property on numerous occasions and seen some, but not much, improvement. In response to a comment from Mr. Baker, Commissioner Cowger stated that trash and construction debris should be taken to the landfill to keep the property clean. In response to a question from Commissioner Boggs, Mr. Tudor stated that Mr. Baker's property has not been singled out as a nuisance and advised that DRP is currently investigating roughly 50 nuisance cases in the County. In response to questions from Commissioner Shockley, Mr. Baker stated that installation of the septic system on the property is close to completion and that it would cost approximately \$20,000 in materials to complete construction of the home. In response to a question by Commissioner Church, Mr. Baker stated that he could not get a loan to complete the project. Commissioner Cowger stated that Mr. Baker's neighbors have confirmed that they do not object to him continuing construction of the home as long as he cleans up the property. Mr. Baker stated that he would be willing to store debris in a truck bed and move the travel trailer behind the home, so that it could not be seen from the road. Commissioner Boggs stated that DRP has been working with Mr. Baker for six years, but the property is still a nuisance. County Attorney Sonny Bloxom advised that the Commissioners could work with Mr. Baker to address the nuisance conditions; however, there was no provision in County law that would allow him to continue living in the travel trailer. Commissioner Cowger stated that the Commissioners cannot violate their own law and suggested that Mr. Baker have the travel trailer relocated to a trailer park while he completes construction of the house. Mr. Baker stated that if he was forced to move the trailer he would not be able to afford to complete construction of his house. Following much discussion and upon a motion by Commissioner Shockley, the Commissioners voted 5-2, with Commissioners Boggs and Gulyas voting in opposition, to postpone enforcement of the nuisance abatement for 60 days in order to provide Mr. Baker with additional time to clean up the property and relocate the trailer, with the further condition that Mr. Baker would reappear before the Commissioners in 60-days to review compliance and to take immediate action to abate the nuisance condition if he fails to meet these conditions.

The Commissioners met with Budget Officer Kathy Whited, Finance Officer Harold Higgins and Assistant Finance Officer Phil Thompson who provided them with an analysis of the Ocean City Property Tax Differential Study. Mr. Higgins stated that the Town of Ocean City is requesting a \$13.9 million tax set off from Worcester County, better known as a tax differential. Property tax set-offs enable counties to compensate municipalities, in this case Ocean City, for governmental services or programs that municipalities provide in lieu of similar county services or programs. He advised that Ocean City recently commissioned an outside agency to complete a study to help the town determine whether to petition the state to change its

existing law and require Worcester County to provide a tax differential to the town. This study claims that Ocean City's property owners do not benefit either directly or indirectly from many county services. Mr. Higgins explained that the findings of Ocean City's Tax Differential report suggest that \$13,894,610 in property taxes should not be paid by Ocean City tax payers. This would result in a tax differential of \$0.22 per \$100 of assessed property value. The savings for Ocean City property owners would equate to a \$0.06 decrease in the real property tax rate with a decrease of approximately 9% in their county tax bill or a savings of approximately \$180.00 for the average property owner. Those living outside of Ocean City would see an increase of \$0.16 in the real property tax rate or a 23% increase, which would increase tax bills by an average of \$480. The requested increase would affect the residents of Berlin, Snow Hill, and Pocomoke, as well as all unincorporated areas of the county. Mr. Higgins concluded that since the County was not consulted during preparation of this study, it was vital that staff provide additional insight to show that Ocean City does benefit from the aforementioned services.

Mr. Thompson stated that the town already receives more in annual grants from the County than it would if a tax differential (based on statewide averages) were to be granted. He advised that the County's analysis referenced the current 2006 tax set-off report compiled by the Maryland Department of Legislative Services. He further advised that staff determined that Ocean City's request for a tax differential of \$13.9 million is not reasonable and is grossly inflated when compared with even the richest counties in Maryland. Montgomery County for instance, which is one of the wealthiest counties in the country, spends just \$7.2M of its \$3.5B budget on tax set-offs for approximately one million municipal residents. He further advised that the State average tax set-off is less than one percent (0.719%) of each county's entire Operating Budget. He stated that Ocean City has requested a tax differential equal to nearly 10% of the entire Worcester County Operating Budget, which is 13 times higher than the state average. Mr. Thompson stated that the County provides grants to all four towns and in FY08 would provide over \$3.1 million in grants to or on behalf of Ocean City. He advised that applying the state-wide average tax set-off to the current year budget, the result would be a total tax set-off for Ocean City of only \$1,262,925, almost \$2 million less than the County has budgeted for the town in grant funding.

Mr. Higgins stated that Ocean City's request for a tax set-off alleges that county departments do not either directly or indirectly provide services to the citizens of Ocean City. He stated that staff's analysis of the Tax Differential Report shows a very different picture and reviewed the services provided by each County department and outlined how those services either directly or indirectly benefit the Town of Ocean City. He stated that if the requested tax differential were to be granted, the County would either need to cut the General Government Budget by \$7.1 million dollars and the Board of Education's budget by \$6.8 million dollars or increase taxes to all other areas by 23% or \$480 on average for 41,835 county residents outside Ocean City limits. Following the presentation, the Commissioners thanked staff for providing them with this analysis and agreed to meet with the Town of Ocean City.

The Commissioners met with Comprehensive Planning Director Sandy Coyman to review and discuss proposed additions to the Northern Worcester County Transportation Study to address the potential impacts of the introduction of Video Lottery Terminals (VLT), also known as slot machines, at the Ocean Downs Racetrack in Berlin. Mr. Coyman stated that the Planning Commission recommends that the traffic study consultants, RBA Group of Columbia,

Maryland, increase its scope of work to include additional traffic data and recommendations to provide the County with viable approaches to addressing the traffic needs that would be created as a result of the introduction of VLT in Worcester County. Mr. Coyman stated that the proposed additions to the study would result in an increase of \$8,384.00, to the current contract price of \$93,872.00, for a total cost of \$102,256.00 with \$100,000 budgeted for the study. He advised that funding is available within the FY08 Comprehensive Planning budget to cover the cost overrun. Following some discussion and upon a motion by Commissioner Gulyas, the Commissioners unanimously approved the proposed expansion of the study.

The Commissioners answered questions from the press, after which they adjourned for lunch.

After lunch, the Commissioners reconvened in open session

The Commissioners met with Mr. Coyman to review and discuss a potential grant for establishment of Living Shoreline Demonstration Projects in Worcester County. Mr. Coyman advised that the County could be awarded up to \$400,000 in grant funds through the Maryland Department of the Environment (MDE), which could be used to fund living shoreline projects in the Coastal Bays watershed with County matching funds of \$20,000 or more. Upon a motion by Commissioner Gulyas, the Commissioners unanimously authorized Comprehensive Planning to apply for grant funds for the project. In response to a question from Commissioner Cowger, Mr. Coyman clarified that the demonstration projects would be conducted on private property rather than County-owned land. Mr. Coyman reviewed the proposed project, stating that it would cost between \$150 and \$300 per linear foot to complete with private property owners paying approximately 20% to 25% of project costs after grant funding. He stated that the restoration of the shoreline would help protect the fragile ecosystems therein and further advised that hardened shorelines armored with bulkhead or rip rap eliminate native shoreline habitat and interfere with the life cycle of many native organisms. He advised that the living shoreline project would provide needed habitat and erosion control by employing the use of sand fill, offshore sills and other sand containment structures along with marsh grass plantings. He advised that 14 private land owners in the Coastal Bays watershed have expressed interest in participating in the project. Commissioner Cowger opposed the use of taxpayer money to upgrade private property. In response to comments by Commissioner Cowger, Mr. Coyman estimated that each program participant would be required to fund approximately \$3,300 of the costs related to erecting living shorelines on their individual properties. He also stated that the demonstration projects would introduce contractors to the cost effective methods that could replace the use of bulkheads and rip rap. In response to a question from Commissioner Busick, Mr. Coyman stated that the restored shorelines provide much needed habitat for sea creatures like horseshoe crabs and turtles. Commissioner Shockley suggested the County apply for the grant funds and require program participants to cover the entire local share. Upon a motion by Commissioner Boggs, the Commissioners voted 5-2, with Commissioners Cowger and Gulyas voting in opposition, to supercede the prior motion and authorizing the County to apply for the grant with the caveat that if funds are awarded the benefitting property owners would be requested to pay the local shares of the total cost, which is not covered by MDE grant funding.

Chief Administrative Officer Gerald T. Mason met with the Commissioners to discuss a recent letter and previous correspondence from Charles R. "Buddy" Jenkins outlining the unique headwinds that are facing his amusement parks in Ocean City (Jolly Roger and the Ocean City Pier, which is owned by the Town of Ocean City and leased to Mr. Jenkins on a long-term basis) and requesting that said amusement parks be included in House Bill 1151 Worcester County - Property Tax Credit - Historically Operated Amusement Park. Mr. Mason reviewed the letters. Commissioner Cowger stated that he would rather see a separate bill introduced providing Jolly Roger Amusements and the Ocean City Pier with tax relief. In response to a question from Commissioner Cowger, Mr. Jenkins stated that he had spoken with Delegate Jim Mathias and had been informed that changes could be made to the current bill to include the two parks. Commissioner Church advised that HB 1151 was titled specifically for historically operated amusement parks and asked if the two parks in question could meet that qualification. Mr. Jenkins stated that Pier Rides opened in 1928 with the Jolly Roger Amusement Park being established in 1965. Commissioner Church stated that he felt sympathetic to the need to protect the two amusement parks, but did not want to see them added to the existing bill. Commissioner Boggs thanked Mr. Jenkins for providing the Commissioners with details regarding the amusement industry and stated that he presented a compelling case; however, due to pending State budget cuts she would prefer to revisit this issue at this time next year. Commissioner Gulyas stated that the Commissioners must protect the amusement parks to assure that Ocean City maintains its family friendly image and conceptually supported enabling legislation for the two parks that would be similar to HB 1151. Following much discussion and upon a motion by Commissioner Cowger, with Commissioner Boggs voting in opposition, the Commissioners agreed to conceptually support the proposed enabling legislation and agreed to send such a letter to Delegate Mathias to request that he draft a bill, which they would comment upon once introduced.

The Commissioners met with Mr. Tudor to discuss Rezoning Case No. 389, which was filed by Sunwoo and Kyunghi Nam for an amendment to the Official Zoning Maps to change approximately 8.56 acres of land located on the northerly side of MD Rt. 394 (Market Street) to the west of U.S. Rt. 113 in the Second Tax District of Worcester County, Maryland from M-1 Light Industrial District to B-2 General Business District. The public hearing on Rezoning Case No. 389 was held by the Commissioners on December 4, 2007. The Planning Commission determined that there had been a change in the character of the neighborhood and that there was a mistake in the existing zoning of the petitioned area and a change in zoning would be more desirable in terms of the objectives of the Comprehensive Plan. However, the Town of Snow Hill and Snow Hill Alliance for Responsible Progress (SHARP) strongly opposed the request for the following reasons: the property was not in a growth area; the property was not targeted for annexation; and rezoning the property to B-2 would deflect business away from the center of Town. Following the original hearing, the Commissioners agreed to postpone further action until the Town of Snow Hill and the Nams could meet to discuss possible alternatives to resolve this issue.

Mr. Tudor provided the Commissioners with an update of the situation, advising that the town and Mr. Nam are still miles apart in their attempts to resolve any of the issues and the case

has been returned to the Commissioners for their decision. Commissioner Busick stated that the Planning Commission voted 4-3 to recommend rezoning the property and requested more information on the vote. In response to Commissioner Busick's request, Mr. Bloxom advised that the hearing was closed, so the Commissioners could not accept further testimony in the case. Commissioner Boggs stated that she has been deeply conflicted over this issue and stated her disappointment that the town was unable to reach some agreement with Mr. Nam. She stated that the Commissioners are preparing to consider the Comprehensive Rezoning and Mr. Nam's request to rezone the property should be considered by the Commissioners at that time. Commissioner Shockley stated that he voted against the rezoning previously and would do so again because there had not been a mistake in the original zoning nor had there been a change in the character of the neighborhood because the surrounding properties that had been zoned B-2 were annexed by the town while this property remained in the County. In response to a comment by Commissioner Gulyas, Development Review and Permitting (DRP) Deputy Director Phyllis Wimbrow stated that DRP is obligated to process all rezoning applications that are submitted to them unless the Commissioners impose a moratorium. Following much discussion and upon a motion by Commissioner Shockley, the Commissioners voted 5-2, with Commissioners Church and Cowger voting in opposition, to deny the rezoning request, since there was no mistake in the original zoning nor had there been an unplanned change in the character of the neighborhood.

Public Works Director John Tustin provided the Commissioners with an update on the Worcester County Department of Public Works Treatment Process Evaluation for the Mystic Harbour Wastewater Treatment Plant (WWTP) prepared by Johnson, Mirmiran & Thompson (JMT) of Sparks, Maryland. Mr. Tustin confirmed that the Mystic Harbour Water and Wastewater Advisory Board is in concurrence with the findings of the report. Mr. Tustin stated that the report recommends a complete replacement of the Mystic Harbour WWTP using membrane bioreactors for treatment of the wastewater for the following reasons: the process is similar to that which is being used at both the Glenn Riddle and the Landings WWTPs; produces high quality effluent suitable for shallow injection wells and easily adaptable for spray irrigation; treatment units are small enough to be enclosed inside a building where odors can be managed; new process fits on the current site and can be constructed with little interruptions to current operations; the process is hailed as being "Operator Friendly"; and the process is cost competitive with other alternatives. Bob Wimmer of JMT reviewed the report. In response to a question from Commissioner Church, Mr. Wimmer stated that construction of the membrane bioreactors could begin as early as October 2008 and be completed within 18 months. In response to a question from Commissioner Boggs, Mr. Wimmer confirmed that the system could easily be converted to spray irrigation. However there would be additional storage and transmission lines needed for that purpose. In response to a question by Commissioner Shockley, Mr. Wimmer stated that the total project would cost approximately \$5.2 million plus design costs. Mr. Tustin stated that the County is pursuing the availability of Bay Restoration Funds to help cover project costs and would therefore not know the exact cost to ratepayers until the availability of these funding sources was determined. In response to a question by Commissioner Church, Mr. Wimmer stated that the proposed membrane bioreactors were the second least expensive option. Commissioner Church stated that this project must be done. Following some discussion and upon a motion by Commissioner Church, the Commissioners authorized staff to

apply for a Maryland Department of the Environment (MDE) Revolving Loan along with Bay Restoration funds to help cover project costs.

Following a motion by Commissioner Cowger, seconded by Commissioner Gulyas, the Commissioners unanimously voted to meet in closed session at 2:23 p.m. in the Commissioners' Meeting Room to discuss legal and personnel matters permitted under the provisions of Section 10-508(a)(7) of the State Government Article of the Annotated Code of Maryland and to perform executive actions. Also present at the closed session were Gerald T. Mason, Chief Administrative Officer; Kelly Shannahan, Assistant Chief Administrative Officer; Sonny Bloxom, County Attorney; and Kim Moses, Public Information Officer. Topics discussed and actions taken included consulting with counsel to obtain legal advice and performing executive actions.

Following the closed session, the board adjourned to meet again on March 4, 2008.